No.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1994

GEORGE W. HEINTZ and BOWMAN, HEINTZ, BOSCIA & McPHEE,

Petitioners,

v.

DARLENE JENKINS,

Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

PETITION FOR A WRIT OF CERTIORARI OF GEORGE W. HEINTZ AND BOWMAN, HEINTZ, BOSCIA & McPHEE

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46 pp

QUESTION PRESENTED FOR REVIEW

Is an attorney engaged solely to prosecute litigation against a consumer a "debt collector" within the meaning of the Fair Debt Collection Practices Act (15 U.S.C. § 1692a(6))?

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PREVIOUS OPINION

The decision of the Court of Appeals in *Jenkins v. Heintz, et al.*, is officially reported at 25 F.3d 536 (7th Cir. 1994). The decision of the district court was not officially reported.

STATEMENT OF JURISDICTION

The Court of Appeals filed its decision in this case on May 27, 1994. No petition for rehearing was filed.

This Court has jurisdiction to review this case pursuant to 28 U.S.C. § 1254(1).

STATUTES INVOLVED

15 U.S.C. § 1692a(6) (original and as amended); 15 U.S.C. § 1692e; 15 U.S.C. § 1692f; 15 U.S.C. § 1692i (statutory texts reprinted in full in the Appendix).

STATEMENT OF THE CASE

Facts

All of the foregoing facts are set forth in respondent's amended complaint, reprinted in full in the Appendix (App. 15-23).

Respondent, Darlene Jenkins ("Jenkins"), defaulted on a car loan she had taken out with Gainer Bank ("the bank"). The installment loan agreement required that Jenkins maintain insurance on the car. In the event Jenkins did not maintain insurance, the bank was authorized to do so and, at its sole option, add the expense of maintaining insurance to the loan balance.

When Jenkins defaulted on the car loan, she also stopped buying insurance. The bank purchased insurance and hired petitioner, George Heintz, and the law firm of Bowman, Heintz, Boscia & McPhee (collectively "Heintz") to recover the unpaid balance on the loan, including insurance payments made by the bank.

Heintz filed suit on behalf of the bank for the unpaid balance on the installment agreement. After filing suit, Heintz wrote a letter to Jenkins' attorney explaining the bank's theory of the case and proposing that the case be settled (the full text of this letter is reprinted in the Appendix).

Jenkins did not believe the bank was entitled to $4,173 for insurance. She contended that the insurance charge

was a financial protection policy against default, rather than insurance against damage or loss to the car.

Proceedings in the Lower Courts

Jenkins sued Heintz under the Fair Debt Collection Practices Act. *See, generally*, 15 U.S.C. § 1692. She alleges that Heintz violated 15 U.S.C. § 1692f, which prohibits debt collectors from adding unauthorized charges to a debt. She further alleges that Heintz' efforts to collect the allegedly false insurance charge was the use of a "false representation or deceptive means" of collecting a debt under 15 U.S.C. § 1692e.

Heintz filed a motion to dismiss the complaint under F.R.C.P. 12(b)(6). Heintz argued that an attorney engaged solely to prosecute litigation on behalf of a client/creditor was not a "debt collector" within the meaning of the Act. Heintz supported his motion with extensive references to the legislative history and administrative interpretation supporting this construction of the Act. The district court granted the motion and dismissed the case with prejudice (App. 9-15).

The Court of Appeals reversed (App. 1-8). Relying upon the allegations in Jenkins' complaint that Heintz "regularly engaged for profit in the collection of debts," the court found that Heintz was a debt collector within the meaning of 15 U.S.C. § 1692a(6). The court rejected the argument that Congress did not intend the Act to apply to attorneys engaged solely in the prosecution of litigation, finding that the broad statutory language "entered all areas inhabited by 'debt collectors' even litigation" (25 F.3d at 539). The court declined to address the legislative history and administrative interpretation of the Act; "our analysis ends with the [statutory] language. *Id.* at 539.

ARGUMENT

I.

THIS COURT SHOULD GRANT CERTIORARI TO RESOLVE THE CONFLICT AMONG THE COURTS OF APPEALS CONCERNING THE APPLICABILITY OF THE ACT TO ATTORNEYS ENGAGED SOLELY IN THE PROSECUTION OF LITIGATION.

The Seventh Circuit sided with the Fourth Circuit's decision in *Scott v. Jones*, 964 F.2d 314 (4th Cir. 1992), in holding that an attorney engaged to pursue litigation against a defaulting consumer may be liable under the Fair Debt Collection Practices Act. Not cited in the opinion were the more recent decision in *Fox v. Citicorp Credit Services*, 15 F.3d 1507 (9th Cir. 1994), as well as the subsequently-issued decision in *Paulemon v. Tobin*, ___ F.3d ___ (2nd Cir. 1994, Dk. No. 94-7153; dec'd 7/13/94). These cases agree with the decisions in both *Scott* and the instant case.

However, in *Green v. Hocking*, 9 F.3d 18 (6th Cir. 1993), the Sixth Circuit came to precisely the opposite conclusion. The court held that the Act, viewed in context, "was not intended to govern attorneys engaged solely in the practice of law." 9 F.3d at 21.

The holding in *Green* echoes the holding of the district court in this case, as well as decisions from other district court judges. *Fireman's Insurance Company of Newark, New Jersey v. Keating*, 753 F.Supp. 1137 (S.D. N.Y. 1990); *National Union Fire Ins. Co. v. Hartel*, 741 F.Supp. 1139 (S.D. N.Y. 1990). As will be seen in the foregoing sections, these opinions, and not those of the other courts of appeals, effectuate congressional intent. This Court should grant certiorari to resolve this split among the circuits.

II.

THE FAIR DEBT COLLECTION PRACTICES ACT DOES NOT APPLY TO ATTORNEYS ENGAGED SOLELY TO REPRESENT THEIR CLIENTS IN CONSUMER DEBT LITIGATION.

The primary flaw in the Seventh Circuit opinion is that it finds "plain meaning" in a phrase which is not nearly so plain. The term "debt collector" is reflexively defined in 15 U.S.C. § 1692a(6), *i.e.*, as someone who regularly engages in the collection of debts. That begs the question posed by this case: what is the "collection of a debt?"

Like many ambiguous terms, there is a core of persons or objects to which the term clearly applies. Collection agencies, credit bureaus and the like, who are hired by creditors to contact debtors to pressure them into paying their debts, plainly are engaged in the collection of debts within the meaning of the Act. But the activities of an attorney, whose only contact with the debtor may be through pleadings or correspondence with the debtor's counsel, do not neatly fit within the common, everyday use of the phrase "collection of a debt."

When a statute is ambiguous, the courts turn to the legislative history of the statute to divine congressional intent. *Burlington Northern R.R. Co. v. Oklahoma Tax Commission*, 481 U.S. 454 (1987). Furthermore, if the legislative history is clearly contrary to the language of the statute, it may overcome the congressional language, although such circumstances are exceptional. *Id.* at 461.

In the instant case, the intent of Congress with respect to attorneys practicing law is clear and uncontested. In the original version of the statute, attorneys were specifically exempted from the definition of "debt collector." (App. 25-26). In 1986, Congress deleted the attorney exemp-

tion from the Act. In so doing, Congress cited the abuse by attorneys of their exemption, allowing them to engage in the unsavory collection tactics (late night phone calls, telephone calls at work, harassing and threatening letters) forbidden to non-attorney collectors. H.R. Rep. No. 405, reprinted in 1986 *U.S. Code, Congress and Administrative News* 1757, 1754-55.

The record of what Congress meant by the elimination of the attorney exemption as it pertains to this particular case strongly favors the inapplicability of the Act to attorneys in Heintz' position. Representative Frank Annunzio, who sponsored the legislation repealing the attorney exemption, addressed the House of Representatives three months subsequent to the passage of the amendatory Act. Representative Annunzio stated:

> Ethical attorneys need have no concerns about the impact of the Act on their practices. The [Act] regulates debt collection, *not the practice of law*. Congress repealed the attorney exemption to the Act not because of attorneys' conduct in the courtroom, but because of their conduct in the back room. Only collection activities, *not legal activities are covered by the Act*. (Emphasis added). 132 Cong. Rec. page 10,031 (1986).

Representative Annunzio further stated:

> "[R]epeal of the exemption does not infringe upon the practice of law by attorneys, it does assure that consumers are protected from the unfair and unethical practices, regardless of the *profession* of the collector." (Emphasis added). *Id.*

Representative Annunzio's point is unmistakable. The ordinary practice of law, which necessarily includes the filing of pleadings and communications with opposing counsel, does not make one a debt collector. Debt collectors

use "backroom" tactics; there is no allegation that Heintz did any of this while providing legal representation to the bank.

Additionally, this Court will accept an administrative agency's construction of an ambiguous statute if it is based upon a permissible construction. *Mead Corporation v. Tilley*, 490 U.S. 714, 722 (1989). The agency charged with administering the Fair Debt Collection Practices Act is the Federal Trade Commission. Its position was stated in its 1988 staff commentary of the Act:

> An attorney or law firm whose efforts to collect consumer debts on behalf of its clients regularly include activities traditionally associated with debt collection, such as sending demand letters, dunning notices or making collection calls to consumer, is included in the Act's definition of "debt collector." *Statement of General Policy or Interpretation Staff Commentary Fair Debt Collection Practices Act*, 53 Fed. Reg. 50, 097, 50, 102 (1985). On the other hand, "an attorney whose practice is limited to legal activities, e.g., the filing and prosecution of lawsuits to reduce debts to judgment)" does not fall within the definition. *Id.*

The original attorney exemption was not conduct-based. Attorneys were not exempt from liability based upon the particular tactics which they employed against the debtor; they were exempt from *all* liability under the Act. Thus, the removal of the exemption merely brought to the forefront the question posed in this case. This question could never have arisen under the original statutory language, when attorneys were exempt from all liability by virtue of their status.

Contrary to the holdings of *Fox* and *Paulemon*, this interpretation of the Act is not a "phantom limb" theory

of statutory interpretation, whereby the blanket attorney exemption remains in effect despite the repeal of the exemption. *Fox*, 15 F.3d at 1512. Heintz is not asking for an exemption for liability when he acts as *a debt collector*. Heintz contends that the filing of a complaint in court on behalf of a client and following up the complaint with a letter to opposing counsel are not the actions of a "debt collector" as that term is commonly understood.

In fact, liability for attorneys in this situation is the result of phantomlike amendment. In 1978, Congress did not have to consider whether its definition of "debt collector" included attorneys engaged in the actual practice of law. That is because attorneys were exempt from *any* liability under the Act. When the Act was amended to remove this exemption, the issue in this case, not relevant beforehand, emerged. That is why Representative Annunzio had to explain what the repeal of the attorney amendment was intended to accomplish.

Because the core of the phrase "debt collector" does not clearly include attorneys representing their clients in litigation, the Act is ambiguous. This Court should accept review and follow the legislative history to achieve the result Congress intended when deleting the attorney exemption—to prevent application to those engaged solely in the practice of law.

CONCLUSION

For the reasons stated, petitioners George Heintz, and Bowman, Heintz, Boscia & McPhee respectfully request that this Court issue a writ of certiorari to the United States Court of Appeals for the Seventh Circuit.

Respectfully submitted,

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Dated: August 25, 1994

APPENDIX

IN THE
UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

No. 93-2861

DARLENE JENKINS,

Plaintiff-Appellant,

v.

GEORGE W. HEINTZ and BOWMAN, HEINTZ, BOSCIA & MCPHEE,

Defendants-Appellees.

Appeal from the United States District Court
for the Northern District of Illinois, Eastern Division.
No. 93 C 1332—**George M. Marovich,** *Judge.*

ARGUED JANUARY 4, 1994—DECIDED MAY 27, 1994

Before FAIRCHILD, MANION, and KANNE, *Circuit Judges.*

MANION, *Circuit Judge.* Darlene Jenkins sued George W. Heintz and his law firm, Bowman, Heintz, Boscia & McPhee, for violating the Fair Debt Collection Practices Act, 15 U.S.C. §1601 *et seq.* Heintz and the law firm filed a motion to dismiss, arguing that attorneys who file suit to collect debts are not covered by the Act. The district court agreed and dismissed the lawsuit. Jenkins appeals. We reverse and remand.

I. Facts

Darlene Jenkins borrowed money from Gainer Bank to purchase a car. The installment contract between the bank and Jenkins required that she keep insurance on the car until she made her last payment. If she did not keep insurance, the installment contract allowed the bank to purchase insurance for the car, and then to charge Jenkins for the cost of the insurance. Specifically, the installment contract provided:

> if the Buyer does not pay the taxes on the collateral [or] keep it insured against loss or damage, . . . the Creditor can if it wishes to do so and Buyer will have to reimburse the Creditor upon demand, or Creditor at its sole option, may add said expenses to the Buyer's unpaid balance, which shall be payable by the Buyer at the annual percentage rate then in effect.

Jenkins defaulted on her loan. She also stopped buying insurance for the car. The bank then purchased insurance, and hired an attorney, George W. Heintz, and his law firm, Bowman, Heintz, Boscia & McPhee, to recover the remaining installment payments and the cost of the insurance. The attorneys sued Jenkins on behalf of the bank, demanding the installment payments and a $4173.00 insurance charge, and then attempted to settle the matter out of court.

Jenkins took issue with the $4173.00 insurance demand. She had reason to believe that the bank did not buy simple damage and loss insurance for the car, but instead purchased a financial protection policy to insure against the possibility that she might default on the loan. She figured that she had no obligation to reimburse the bank for that type of insurance; she was only required to reimburse the bank if it purchased damage and loss insurance for the car.

Jenkins filed suit against Heintz and his law firm, alleging that their attempts to pass the unauthorized insurance costs on to her violated the Fair Debt Collection Practices

Act. Her legal theory was two-fold. First, she claimed that because the insurance charge was not authorized by the installment contract, that the attorneys violated §1692f of the Act, by adding an unauthorized amount onto the debt. Second, she claimed that the attorneys' attempt to sneak the insurance charge onto her bill amounted to a "false representation or deceptive means to collect any debt" in violation of §1692e of the Act.

Heintz and his law firm moved to dismiss. They asserted that Congress simply could not have intended to regulate normal legal proceedings under the auspices of the Act. The district court agreed, and dismissed the case. Jenkins appeals. We must determine whether the broad purview of the Act covers the type of attorney conduct described in Jenkins' complaint.

II. Analysis

We review the district court's dismissal for failure to state a claim *de novo*. *Midwest Grinding Co., Inc. v. Spitz*, 976 F.2d 1016, 1019 (7th Cir. 1992). In conducting our review, we accept all material allegations made in the complaint as true, and we draw all reasonable inferences from the allegations in the plaintiff's favor. *Scott v. O'Grady*, 975 F.2d 366, 368 (7th Cir. 1992). We will affirm the court's dismissal if "it appears beyond doubt that [the plaintiff] can prove no set of facts in support of this claim which would entitle him to relief." *Conley v. Gibson*, 355 U.S. 41, 45-46 (1957).

Congress enacted the Fair Debt Collection Practices Act in 1977, "to eliminate abusive debt collection practices by debt collectors, to ensure that those debt collectors who refrain from using abusive debt collection practices are not competitively disadvantaged, and to promote consistent state action to protect consumers against debt collection abuses." 15 U.S.C. §1692(e). The Act targeted common abusive debt collection practices, like late-night phone calls, §1692c(a)(1), embarrassing communications through third parties, §1692c(b), harassment, §1692d, false and mis-

leading representations by the debt collector, §1692e, and assorted other practices, §§1692f-j. Obviously, Congress did not intend to eliminate all debt collection practices, only those which it considered unfair. In its original form at least, the Act stopped short of regulating certain methods of debt collection. For instance, legal proceedings did not fall under the purview of the Act. Congress accomplished this by explicitly exempting from the definition of "debt collector," "any attorney-at-law collecting a debt as an attorney on behalf of and in the name of a client." §1692a(6)(F).

The attorney exemption meant that attorneys could go about the legitimate business of debt collection without the fear of being sued. But it also made attorneys an unregulated class of debt collectors. Some apparently abused this loophole and engaged in abusive debt collection practices with impunity. As the Sixth Circuit recently noted, "[a]ttorneys were advertising to creditors that they could do with impunity what other collectors could no longer do: 'late-night telephone calls to consumers, calls to consumers' employers concerning the consumer's debts,' and 'disclosure of consumer's debt to third parties.' " *Green v. Hocking*, 9 F.3d 18, 21 (6th Cir. 1993). In 1986, Congress acted to close this loophole; it amended the Act to remove the attorney exemption.

This case presents the question whether, in the wake of the 1986 amendment, attorneys acting in the course of litigation are now included within the scope of the Act. The district court determined that even in its revised form, the Act was simply not meant to regulate attorneys acting in the course of litigation. Our *de novo* review of the district court's interpretation of the statute's meaning requires that we look first to the statute's language. *Community for Creative Non-Violence v. Reid*, 490 U.S. 730, 739 (1989). When the statute's language is clear, the text controls. *Estate of Cowant v. Nicklos Drilling Co.*, ___ U.S. ___, 112 S.Ct. 2589, 2594 (1992).

The Act regulates the conduct of any "debt collector." §1692a(6). The Act defines "debt collector" as "any per-

son who uses any instrumentality of interstate commerce or the mails in any business the principal purpose of which is the collection of any debts, or who regularly collects or attempts to collect directly or indirectly, debts owed or due or asserted to be owed or due another." §1692a(6). Nothing in this definition hints that attorneys in the course of litigation should be excluded. Therefore, if a plaintiff can demonstrate that an attorney fits within the rubrics of the statutory definition of "debt collector," then that attorney's conduct is regulated.

Here, Jenkins alleged in her complaint that Heintz and his law firm were "regularly engaged for profit in the collection of debts allegedly owed by consumers. Each is a 'debt collector' as defined by the [Act §1692a(6)]." The proceedings have not advanced beyond the motion to dismiss stage. Therefore, we are required to accept this allegation as true. *Scott*, 975 F.2d at 368. If this allegation is true, Heintz and his law firm fall within the statutory definition of "debt collector" and the Act regulates their conduct.

In an attempt to escape this definition, Heintz and his law firm make an appeal to common sense. They argue that the Act was never meant to reach reasonable debt collection practices, such as litigation. It was only meant to cover the seamier practices of debt collection, such as late-night phone calls and other abusive conduct. Basically, they argue—with some indignation—that they are lawyers and not mere debt collectors. But the Act makes no such distinction; it has not since the 1986 amendment eliminating the attorney exemption. Under the Act as presently written, lawyers can be debt collectors, as long as they engage in the business of debt collection.

This view comports with the Fourth Circuit's decision in *Scott v. Jones*, 964 F.2d 314 (4th Cir. 1992). There the court faced the same question: whether a lawyer in the course of litigation may be considered a debt collector under the Act. The court interpreted the plain meaning of the statute, and concluded that a lawyer may be con-

sidered a debt collector, as long as he meets the statutory definition. The court was not persuaded by the lawyer's argument that there was some obvious distinction between the practice of law and debt collection: "[w]e do not accept [the lawyer's] argument that he was engaged in the practice of law, not the collection of debts. We find this to be an artificial distinction. No matter what name is applied to [the lawyer's] activities, it is clear that the 'principal purpose' of his work was the collection of debt." *Id.* at 316.

The Sixth Circuit has reached a contrary result. In *Green*, 9 F.3d 18, the court considered whether a lawyer, by filing a complaint, qualified as a debt collector under the Act. The court concluded that "[a]n examination of the [Act] in context reveals that it was not intended to govern attorneys engaged solely in the practice of law. A contrary result would produce absurd outcomes." *Green*, 9 F.3d at 21. After demonstrating how literal enforcement could interfere with normal litigation, the court proceeded to rely on legislative history to support its position that Congress never intended the Act to reach litigation activities.

As the Sixth Circuit noted, there are conceivable problems with regulating attorneys in their debt collection efforts. Unlike the Sixth Circuit, however, our analysis of the statute ends with its language; we do not reach the legislative history. It appears that by removing the attorney exemption without otherwise adjusting the statute, Congress—wittingly or not—proscribed even certain litigation-related debt collection activities. There may be abundant reasons why Congress should not regulate litigation aimed at collecting debts. But in drafting a broad statute, Congress entered all areas inhabited by debt collectors, even litigation. We must faithfully apply the law as Congress drafted it. We should not disregard plain statutory language in order to impose on the statute what we may consider a more reasonable meaning. *See Matter Witkowski*, 16 F.3d 739, 745 (7th Cir. 1994) ("Even if there were some justification for concern, courts cannot re-write statutes.").

So the Act reaches lawyers engaged in litigation. But in order for the lawyers to be subject to liability under the Act, the litigation must entail some proscribed debt collection activity. Jenkins alleged that Heintz and his law firm engaged in two proscribed activities: adding an unauthorized charge to the debt, in violation of §1692f, and using deceptive means to collect a debt, in violation of §1692e.

Section 1692f provides in part:

> A debt collector may not use unfair or unconscionable means to collect or attempt to collect any debt. Without limiting the general application of the foregoing, the following conduct is a violation of this section:
>
> (1) the collection of any amount (including any interest, fee, charge, or expense incidental to the principal obligation) unless such amount is expressly authorized by the agreement creating the debt or permitted by law.

The installment contract authorized the bank to purchase loss or damage insurance for the car if Jenkins failed to. It did not authorize the bank to purchase a financial protection policy to insure against default, and then to pass that cost of that policy onto Jenkins. If, as Jenkins alleged in her complaint, the attorneys charged her for the costs of a financial protection policy, the charge would not have been authorized. At the motion to dismiss stage we accept Jenkins' allegation that the attorneys charged her for a financial protection policy rather than for simple car insurance. Heintz and his law firm do not address this point in their brief. So, without more, we must conclude that Jenkins states a claim under §1692f(1).

Jenkins next claims that the unauthorized charge was false, deceptive and misleading. Section 1692e provides in part that "[a] debt collector may not use any false, deceptive, or misleading representation or means in connection with the collection of any debt." Again, if the facts are as Jenkins contends—that Heintz and his law firm knew the insurance charge was unauthorized, but tried to pass

it off anyway—then she states a claim. Because we are required to accept her allegations in this respect as true, we conclude that she does state a claim. Knowingly making unauthorized charges in connection with debt collection is at least deceptive and misleading.

III. Conclusion

In 1977, Congress wielded the weapon of consumer legislation against some obvious targets: late night phone calls, harassment and other abuses common in debt collection. But when it removed the attorney exemption nine years later, it expanded the statute's impact to include some attorneys engaged in debt collection litigation. We are not authorized to second-guess Congress by reading out of the statute certain intrusions we could consider unwarranted. Nor are we allowed to reconstruct the statute's plain meaning by reference to legislative history. We may only apply the law as Congress drafted it. We therefore reverse the district court's determination that the Act does not apply to attorneys in the course of litigation to collect debts. There is no longer an attorney exemption in the Act, and we cannot create one by judicial fiat. We also reverse the district court's determination that the attorneys' actions were not of the type proscribed by the Act. At the motion to dismiss stage, we accept the allegations made in the complaint as true. If Heintz and his law firm acted in the manner Jenkins alleged, then they fall within the broad scope of the Act. We remand for further proceedings consistent with this opinion.

REVERSED AND REMANDED.

A true Copy:

Teste:

Clerk of the United States Court of Appeals for the Seventh Circuit

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS EASTERN DIVISION

DARLENE JENKINS, Plaintiff, v. GEORGE W. HEINTZ; and BOWMAN, HEINTZ, BOSCIA & MCPHEE, Defendants.	)	93 C 1332 Judge George M. Marovich

MEMORANDUM OPINION AND ORDER

Plaintiff Darlene Jenkins ("Jenkins") filed suit against Defendants George W. Heintz and Bowman, Heintz, Boscia & McPhee ("Bowman") alleging that Bowman violated the Fair Debt Collection Practices Act, 15 U.S.C. §1692 ("FDCPA"). Defendants are attorneys who were retained by a creditor to pursue litigation against a debtor who had defaulted on a loan. Bowman sent a letter to Jenkins' attorney in an effort to settle the pending lawsuit. Jenkins alleges that this letter constituted a violation of §§1692(e) and 1692(f) in that certain insurance charges were allegedly added to the debt which were not payable by the debtors. Defendants move to dismiss the complaint on the grounds that Bowman's filing of the suit and sending the settlement letter were purely legal activities and therefore the FDCPA is inapplicable. For the following reasons, we grant the motion to dismiss.

BACKGROUND

Defendant Heintz is an attorney and a partner in the Bowman law firm. Gainer Bank is a client of the Bowman

law firm and has a large number of customers who have signed retail installment contracts for the purchase of motor vehicles.

On July 9, 1992, Heintz wrote a letter to Darlene Jenkins detailing her indebtedness to his client, Gainer Bank, including a debt for premiums for insurance charged to Jenkins as part of her installment contract. This indebtedness arose from Jenkins' default on an automobile installment contract. Gainer Bank's contracts provide that the buyer shall keep the vehicle insured against loss or damage, and if the buyer fails to do so, the creditor (Bank) can purchase the necessary insurance to cover the vehicle. The pertinent language provides:

> . . . if the Buyer does not pay the taxes on the collateral [or] keep it insured against loss or damage, [and that] if the Buyer does not pay the taxes on the collateral, [or] keep it insured . . . the Creditor can if it wishes to do so and Buyer will have to reimburse the Creditor upon demand, or Creditor at its sole option, may add said expenses to the Buyer's unpaid balance, which shall be payable by the Buyer at the annual percentage rate then in effect.

Jenkins claims that Defendants violated the FDCPA by sending letters demanding payment for the allegedly unauthorized insurance and filing collections actions demanding payment for allegedly unauthorized insurance. The Heintz letter outlines Jenkins' indebtedness and ends with the following language:

> I believe the parties have jointly focused on the fact that approximately 35 out of 48 payments on the contract were made although sporadic and delinquent. It would therefore indicate that approximately 13 payments of $236.71 were due or an additional approximate $3000.00 was due. $3000.00 added to the $4,173.00 for insurance along with the late charges

> on the contract along with the interest which was accruing on all the monies advanced for insurance approximately $8,500.00 balance in effect at the time of repossession. This matter is next up for status on July 15, 1992 and hopefully we can discuss it prior to or at the status conference to reach some type of amicable practical resolution.

Plaintiff contends that this letter violated the FDCPA because a portion of the debt owed Bowman's client was allegedly not allowed under the contract. Defendant claims that this complaint should be dismissed because the filing of the lawsuit and the letter pursuing settlement discussions are purely legal activities and therefore the FDCPA does not apply.

DISCUSSION

When reviewing a motion to dismiss we must assume the truth of all well-pleaded factual allegations and make all possible inferences in favor of the plaintiff. *Janowsky v. United States*, 913 F.2d 393, 395 (7th Cir. 1990); *Rogers v. United States*, 902 F.2d 1268, 1269 (7th Cir. 1990). A complaint should not be dismissed "unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." *Gorski v. Troy*, 929 F.2d 1183, 1186 (quoting *Conley v. Gibson*, U.S. 41, 45-6 (1957)).

The FDCPA was originally designed to prevent abusive actions by debt collectors. In keeping with this goal it outlines certain practices from which debt collectors must refrain. As it was originally drafted, the Act specifically excluded attorneys within the definition of "debt collectors" under 15 U.S.C.A. §1692a(6). However, in 1986 Congress amended the FDCPA to delete the attorney exclusion. Pub. L. 99-361, 100 Stat. 768. Now, the language

of the Act includes attorneys who represent creditors in debt collection actions.

Various courts have addressed the issue of whether an attorney acts as a debt collector in an array of fact patterns. A number of courts have held that the FDCPA applies to attorneys who collect debts on a regular basis. For instance, the Fourth Circuit has found that attorneys who regularly collect debts fall within the guidelines of the FDCPA. *Scott v. Jones*, 964 F.2d 314 (4th Cir. 1992).

In *Jones*, an attorney who was retained by banks to represent bank card divisions in lawsuits based on delinquent credit card accounts was held to be a debt collector under the FDCPA. *Id.* at 316. In coming to this conclusion, the Fourth Circuit stressed the fact that at least 70% of the attorney's legal fees were generated from the collection of debts. The court held that the attorney in *Jones* not only collected debts on a regular basis but also that the "principal purpose" of his job was to collect debts. *Id.*

On the opposite end of the spectrum exist the courts that have examined the attorney's role and have held that an attorney who regularly files legal actions for the purpose of collecting debts is not a debt collector if his primary role in collecting those debts is purely of a legal nature. *See, e.g. Green v. Hocking*, 792 F. Supp. 1064 (E.D. Mich. 1992); *National Union Fire Insurance Co. v. Hartel*, 741 F. Supp. 1139, 1140 (S.D.N.Y. 1990); *Fireman's Insurance Co. v. Keating*, 753 F. Supp. 1137 (S.D. N.Y. 1990); *Concord Assets Finance Corp. v. Radebaugh*, 568 N.Y.S.2d 950 (1991).

We do not find that these authorities conflict with each other. The primary focus of the courts in ascertaining whether the FDCPA applies to attorneys is whether the

attorney's principal role is to collect debts. This question is not answered within a vacuum. Instead, the courts take into account a variety of factors including the percentage of debt collection compared to other legal work performed by the firm, the circumstances of the debtor in relation to the attorney, and the behavior alleged to have violated the Act.

In the case at hand, we find that the letter sent by Bowman to Jenkins does not rise to the level of a "dunning" letter as proscribed by the Act. The letter, instead, appears to set forth a rational, and calm approach to remedying a conflict between the parties. To classify this missive as the type of threatening and abusive practice which violates this Act would not correspond with the purpose behind the enactment of the FDCPA.

Legislative history illuminates the purpose of this Act. The amendment in 1986 was designed to regulate activities such as late night telephone calls to consumers, calls to consumers' employers, frequent and repeated calls, threats of legal action on relatively small amounts of debt, simulation of legal process, harassment, threats of seizure of property and the disclosure of consumers' debt to third parties. *See* H. Rpt. 99-405, 99th Cong., 2d Sess. 1-7, reprinted in 1986 U.S. Code Cong. & Admin. News at 1755. A central purpose of the FDCPA is to ensure that the consumer pay the amount that is owed and is not dunned for amounts which he does not owe. Thus, §1692 precludes the false representation of any amount of a debt. The Official Staff Commentary states:

> Attorneys or law firms that engage in the traditional debt collection activities (sending dunning letters, making collection calls to consumers) are covered by the FDCPA, but not those whose practice is limited to legal activities are not covered.

Commentary to §803(6)-2, 53 Fed. Reg. at 50100. Representative Annunzio summed up the purpose after the enactment of the Act by saying:

> Only collection activities, not legal activities, are covered by the Act. . . . The Act applies to attorneys when they are collecting debts, not when they are performing tasks of a legal nature. . . . The Act only regulates the conduct of debt collectors, it did not prevent creditors, through their attorneys, from pursuing any legal remedies available to them.

132 Cong. Rep. H 10031 (1986).

It is evident from the language of the statute and the case law in this area that the FDCPA covers actions by attorneys who engage in the typical debt collecting activities proscribed by the Act. However, it is also evident that not all actions engaged in by attorneys who collect debts violate the Act. The letter before us is a level-headed and reasonable request to settle a conflict between two parties who are in disagreement regarding a debt. It is not threatening, harassing or intimidating. It was not sent to the debtor directly, but rather, to the debtor's attorney. It was not one of a long line of abusive practices, but rather a single plea for settlement purposes. We do not find that this attorney action falls within the meaning of the FDCPA.

We therefore dismiss the complaint for failure to state a claim upon which relief can be granted.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

DARLENE JENKINS, Plaintiff, v. GEORGE W. HEINTZ; and BOWMAN, HEINTZ, BOSCIA & MCPHEE, Defendants.	)	93 C 1332 Judge Marovich Magistrate Judge Weisberg

AMENDED COMPLAINT

Plaintiff, Darlene Jenkins, complains as follows against defendants George W. Heintz ("Heintz") and Bowman, Heintz, Boscia & McPhee ("Bowman firm"):

INTRODUCTION

1. This action is brought to remedy defendants' repeated violations of the federal Fair Debt Collection Practices Act, 15 U.S.C. §1692 et seq. ("FDCPA").

JURISDICTION AND VENUE

2. This Court has jurisdiction under 15 U.S.C. §1692k and 28 U.S.C. §1331. Venue is proper in this District because the acts complained of took place here.

PARTIES

3. Plaintiff is an individual who resides in Chicago, Illinois. She is a "consumer" as defined by the FDCPA, 15 U.S.C. §1692a(3).

4. Defendant Heintz is an attorney and a partner in the Bowman firm, a law firm. Both defendants have offices at 1000 E. 80th Place, Merrillville, Indiana 46410.

5. Both defendants are regularly engaged for profit in the collection of debts allegedly owed by consumers. Each is a "debt collector" as defined in the FDCPA, 15 U.S.C. §1692a(6).

CLASS ALLEGATIONS

6. This action is brought as a class action. Plaintiff tentatively defines the class as all persons from whom defendants demanded payment, through correspondence or suit, on behalf of Gainer Bank for premiums for purported automobile insurance issued by Balboa Insurance Company.

7. The class is so numerous that joinder of all members is impractical.

8. There are questions of law and fact common to the class, which predominate over any questions affecting only individual class members. These questions include:

a. Whether the insurance in fact covered Gainer Bank against credit loss or default.

b. Whether the insurance was authorized to be added to the class members' indebtedness by the standard form contracts that defendants were purporting to enforce.

c. The appropriate amount of statutory damages to be assessed against defendants.

9. There are no individual questions relating to liability, other than whether a class member received one of the offending demands, which can be determined by ministerial inspection of defendant's records.

10. Plaintiff will fairly and adequately protect the interests of the class. She is committed to vigorously litigating this matter. She is greatly annoyed at being the victims of defendants' illegal practice and wishes to see that the wrong is remedied. To that end, she has retained counsel experienced in handling class claims and claims involving unlawful business practices. Neither plaintiff nor her counsel have any interests which might cause them not to vigorously pursue this claim.

11. Plaintiffs' claim is typical of the claims of the class, which all arise from the same operative facts and are based on the same legal theories.

12. A class action is a superior method for the fair and efficient adjudication of this controversy. The very essence of defendants' conduct is to misrepresent that large sums added to the class members' debts is for matters authorized by contract, when that is not the case. The class members have no reasonable means of knowing that the additional charges are not what they are represented to be. Accordingly, failure to permit a class action will result in a failure of justice.

DEMANDS FOR PAYMENT OF UNAUTHORIZED AMOUNTS

13. Defendants regularly collect debts for, among other persons, Gainer Bank, of Gary, Indiana. Gainer Bank has a large number of customers who signed retail installment contracts for the purchase of motor vehicles. Plaintiff is one such individual.

14. Gainer Bank's contracts provided that the buyer will "keep the collateral fully insured against loss or damage," and that "if the Buyer does not pay the taxes on the collateral, [or] keep it insured . . . the Creditor

can if it wishes to do so and Buyer will have to reimburse the Creditor upon demand, or Creditor at its sole option, may add said expenses to the Buyer's unpaid balance, which shall be payable by the Buyer at the annual percentage rate then in effect."

15. In fact, the insurance was "financial protection insurance" issued by a Balboa Insurance Company and which covered Gainer Bank against various types of defaults by the customer on his or her obligation, such as expenses incurred in repossessing a car from a consumer who defaulted, the failure of a customer to pay persons who performed work on the car, resulting in a mechanic's lien, and errors in perfecting security interests. The "financial protection insurance" also indemnified Gainer against liability which it might incur under federal law as a result of a breach of warranty by an automobile dealer or manufacturer (the "holder in due course endorsement").

16. The standard form contract between Gainer and its motor vehicle installment customers, including Ms. Jenkins, did not authorize any such insurance to be charged to her account. Gainer Bank could, of course, procure insurance against credit loss, as long as it did so at its own expense.

17. The insurance charged to Ms. Jenkins' account was not insurance authorized by any agreement between Ms. Jenkins and Gainer Bank and could not be honestly represented as insurance on her automobile.

18. The Bowman firm had actual knowledge of the true nature of the insurance obtained by Gainer Bank no later than April 1992. A complaint filed by the Bowman firm in April 1992 includes amounts for "recovered repossession expense" paid by the Bank's insurance. "Recovered

repossession expense" is not, of course, covered by insurance protecting a car against loss or damage. It is one of the coverages provided by the "financial protection" insurance that Gainer obtained.

DEMANDS FOR PAYMENT OF UNAUTHORIZED AMOUNTS

19. On July 9, 1992, Heintz wrote the letter attached hereto as *Exhibit A*, demanding payment of a debt purportedly owed by Darlene Jenkins. The contents of *Exhibit A* were intended to be, and were in fact, transmitted to Ms. Jenkins. The indebtedness consisted primarily of premiums for insurance allegedly charged to Ms. Jenkins pursuant to the language quoted above.

20. On information and belief, based on a review of court filings, other letters demanding payment for the insurance premiums have been written to other consumers or their representatives.

FILING OF COLLECTION ACTIONS DEMANDING PAYMENT OF UNAUTHORIZED AMOUNTS

21. Over the last few years, Heintz and the Bowman firm filed numerous collection actions on behalf of Gainer Bank in which the amount claimed included sums charged by the Bank, subsequent to the inception of the contract, purportedly for insurance against loss or damage to the collateral. Most resulted in default judgments or agreements by the customer to pay on some basis, undoubtedly made without knowledge of the true nature of the "insurance" charges.

22. One such collection action demanding payment for the unauthorized insurance was filed against plaintiff.

FRAUDULENT CONCEALMENT

23. While the collection actions against plaintiff and some class members were filed, and the demands against some class members were made, more than one year prior to the filing of this action, defendants fraudulently concealed their violation of the FDCPA by misrepresenting, both in the complaint and in correspondence such as *Exhibit A*, the true nature of the "insurance" for which payment was demanded.

24. Plaintiff and the class members had no knowledge of the truth and believed that the insurance procured was simply insurance against loss of or damage to the collateral until 1993. Accordingly, the statute of limitations is tolled.

25. Defendants continued to pursue their demands for payment of the unauthorized insurance by plaintiff until a date within one year of the filing of this action.

DAMAGES

26. The premiums charged in each case amount to $2,000 to $4,000. In addition, interest is charged on the premiums.

27. The inflated debt was reported to credit reporting agencies, damaging plaintiff's credit. On information and belief, the same occurred in the case of other class members.

28. As a result of defendants' demand for payment, plaintiff has suffered mental anguish and has been forced to expend time and money defending against such unauthorized demands.

VIOLATIONS COMPLAINED OF

29. Defendants violated the FDCPA in the following respects by sending letters, such as *Exhibit A*, demanding payment for the unauthorized insurance and filing collection actions demanding payment for the unauthorized insurance:

a. Defendants violated 15 U.S.C. §1692f, which prohibits "unfair or unconscionable means to collect or attempt to collect any debt," and defines "unfair or unconscionable means" to include adding amounts to the principal obligation "unless such amount is expressly authorized by the agreement creating the debt or permitted by law."

b. Defendants violated 15 U.S.C. §1692e, which prohibits "any false, deceptive or misleading representation or means in connection with the collection of any debt," including "[t]he false representation of . . . the character . . . of any debt," and "[t]he use of any false representation or deceptive means to collect or attempt to collect any debt."

WHEREFORE, plaintiff requests that the Court grant the following relief in her favor and in favor of the class, and against defendants:

c. The maximum amount of statutory damages provided under 15 U.S.C. §1692k.

d. Appropriate actual damages to plaintiff and any class member who incurred actual damages.

e. Attorney's fees, litigation expenses and costs.

f. Such other and further relief as is appropriate.

EXHIBIT A

Please refer to our File No.
238719

July 9, 1992

Attorney Steven Morton
Ste. 563, 221 N. LaSalle Street
Chicago, IL 60601

RE: Gainer Bank vs. Darlene Jenkins
89M1-147179

Dear Mr. Morton:

This is a letter to follow up our recent telephone conversation in an attempt to amicably resolve this matter. I am enclosing the following documents and advising as follows:

1. Copy of the retail installment contract whereon I have highlighted on the reverse side revisions eight and twelve regarding having Darlene Jenkins keep the vehicle fully insured at all times and allowing the creditor, if the vehicle is not insured, to purchase such insurance add the price to the contract balance and shall be payable at the then annual percentage rate in effect.
2. This contractual default and failure to keep the vehicle properly insured happen . . four occasions. For your reference, I enclose herewith insurance information showing the Bank purchased insurance for periods of time—November 19, 1987 through April 11, 1991 and paid therefore the amount of $4173.00. This amount plus the accruing contractual interest was added to the contract balance. After the vehicle was repossessed and ultimately sold, the last policy so purchased was canceled and there was a return refund premium of $347.00 which was properly applied to the account.

3. I believe the parties have jointly focused on the fact that approximately 35 out of 48 payments on the contract were made although sporadic and delinquent. It would therefore indicate that approximately 13 payments of $236.71 were due or an additional approximate $3,000.00 was due. $3,000.00 added to the $4,173.00 for insurance along with the late charges on the contract along with the interest which was accruing on all the monies advanced for insurance approximately $8,500.00 balance in effect at the time of repossession.

This matter is next up for status on July 15, 1992 and hopefully we can discuss it prior to or at the status conference to reach some type of amicable practical resolution.

If you have questions or need additional information, please be in contact with me.

Very truly yours,

/s/ George W. Heintz /s/
Merrillville Office
Member of Indiana & Illinois Bars

GWH/dk

Enclosure

STATUTES INVOLVED

§1692a. Definitions (original)

As used in this Subchapter—

(1) The term "Commission" means the Federal Trade Commission.

(2) The term "communication" means the conveying of information regarding a debt directly or indirectly to any person through any medium.

(3) The term "consumer" means any natural person obligated or allegedly obligated to pay a debt.

(4) The term "creditor" means any person who offers or extends credit creating a debt or to whom a debt is owed, but such term does not include any person to the extent that he receives an assignment or transfer of a debt in default solely for the purpose of facilitating collection of such debt for another.

(5) The term "debt" means any obligation or alleged obligation of a consumer to pay money arising out of a transaction in which the money, property, insurance, or services which are the subject of the transaction are primarily for personal, family, or household purposes, whether or not such obligation has been reduced to judgment.

(6) The term "debt collector" means any person who uses any instrumentality of interstate commerce or the mails in any business the principal purpose of which is the collection of any debts, or who regularly collects or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due another. Notwithstanding the exclusion provided by clause (G) of the last sentence of this paragraph, the term includes any creditor who, in the process of collecting his own debts, uses any

name other than his own which would indicate that a third person is collecting or attempting to collected such debts. For the purpose of section 1692f(6) of this title, such term also includes any person who uses any instrumentality of interstate commerce or the mails in any business the principal purpose of which is the enforcement of security interests. The term does not include—

(A) any officer or employee of a creditor while, in the name of the creditor, collecting debts for such creditor;

(B) any person while acting as a debt collector for another person, both of whom are related by common ownership or affiliated by corporate control, if the person acting as a debt collector does so only for persons to whom it is so related or affiliated and if the principal business of such person is not the collection of debts;

(C) any officer or employee of the United States of any State to the extent that collecting or attempting to collect any debt is in the performance of his official duties;

(D) any person while serving or attempting to serve legal process on any other person in connection with the judicial enforcement of any debt;

(E) any nonprofit organization which, at the request of consumers, performs bona fide consumer credit counseling and assists consumers in the liquidation of their debts by receiving payments from such consumers and distributing such amounts to creditor;

(F) any attorney-at-law collecting a debt as an attorney on behalf of and in the name of a client; and

(G) any person collecting or attempting to collect any debt owed or due or asserted to be owed or due another to the extent such activity (i) is incidental to a bona fide fiduciary obligation or a bona fide escrow arrangement; (ii) concerns a debt which was originated by such person; (iii) concerns a debt which was not in default at the time it was obtained by such person; or (iv) concerns a debt obtained by such person as a secured party in a commercial credit transaction involving the creditor.

(7) The term "location information" means a consumer's place of abode and his telephone number at such place, or his place of employment.

§1692a Definitions (as amended in 1986)

As used in this Subchapter—

(6) The term "debt collector" means any person who uses any instrumentality of interstate commerce or the mails in any business the principal purpose of which is the collection of any debts, or who regularly collects or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due another. Notwithstanding the exclusion provided by clause (F) of the last sentence of this paragraph, the term includes any creditor who, in the process of collecting his own debts, uses any name other than his own which would indicate that a third person is collecting or attempting to collected such debts. For the purpose of section 1692f(6) of this title, such term also includes any person who uses any instrumentality of interstate commerce or the mails in any business the principal purpose of which is the enforcement of security interests. The term does not include—

(E) any nonprofit organization which, at the request of consumers, performs bona fide consumer credit counseling and assists consumers in the liquidation of their debts by receiving payments from such consumers and distributing such amount to creditor; and

(F) any person collecting or attempting to collect any debt owed or due or asserted to be owed or due another to the extent such activity (i) is incidental to a bona fide fiduciary obligation or a bona fide escrow arrangement; (ii) concerns a debt which was originated by such person; (iii) concerns a debt which was not in default at the time it was obtained by such person; or (iv) concerns a debt obtained by such person as a secured party in a commercial credit transaction involving the creditor.

(G) Redesignated (F).

§1692e. False or misleading representations

A debt collector may not use any false, deceptive, or misleading representation or means in connection with the collection of any debt. Without limiting the general application of the foregoing, the following conduct is a violation of this section:

(1) The false representation or implication that the debt collector is vouched for, bonded by, or affiliated with the United States or any State, including the use of any badge, uniform, or facsimile thereof.

(2) The false representation of—

(A) the character, amount, or legal status of any debt; or

(B) any services rendered or compensation which may be lawfully received by any debt collector for the collection of a debt.

(3) The false representation or implication that any individual is an attorney or that any communication is from an attorney.

(4) The representation or implication that nonpayment of any debt will result in the arrest or imprisonment of any person or the seizure, garnishment, attachment, or sale of any property or wages of any person unless such action is lawful and the debt collector or creditor intends to take such action.

(5) The threat to take any action that cannot legally be taken or that is not intended to be taken.

(6) The false representation or implication that a sale, referral, or other transfer of any interest in a debt shall cause the consumer to—

(A) lose any claim or defense to payment of the debt; or

(B) become subject to any practice prohibited by this subchapter.

(7) The false representation or implication that the consumer committed any crime or other conduct in order to disgrace the consumer.

(8) Communicating or threatening to communicate to any person credit information which is known or which should be known to be false, including the failure to communicate that a disputed debt is disputed.

(9) The use or distribution of any written communication which simulates or is falsely represented to be a document authorized, issued, or approved by any court, official,

or agency of the United States or any State, or which creates a false impression as to its source, authorization, or approval.

(10) The use of any false representation or deceptive means to collect or attempt to collect any debt or to obtain information concerning a consumer.

(11) Except as otherwise provided for communications to acquire location information under section 1629b of this title, the failure to disclose clearly in all communications made to collect a debt or to obtain information about a consumer, that the debt collector is attempting to collect a debt and that any information obtained will be used for that purpose.

(12) The false representation or implication that accounts have been turned over to innocent purchasers for value.

(13) The false representation or implication that documents are legal process.

(14) The use of any business, company, or organization name other than the true name of the debt collector's business, company, or organization.

(15) The false representation or implication that documents are not legal process forms or do not require action by the consumer.

(16) The false representation or implication that a debt collector operates or is employed by a consumer reporting agency as defined by section 1681a(f) of this title.

§1692f Unfair practices

A debt collector may not use unfair or unconscionable means to collect or attempt to collect any debt. Without

limiting the general application of the foregoing, the following conduct is a violation of this section:

(1) The collection of any amount (including any interest, fee, charge, or expense incidental to the principal obligation) unless such amount is expressly authorized by the agreement creating the debt or permitted by law.

(2) The acceptance by a debt collector from any person of a check or other payment instrument postdated by more than five days unless such person is notified in writing of the debt collector's intent to deposit such check or instrument not more than ten nor less than three business days prior to such deposit.

(3) The solicitation by a debt collector of any postdated check or other postdated payment instrument for the purpose of threatening or instituting criminal prosecution.

(4) Depositing or threatening to deposit any postdated check or other postdated payment instrument prior to the date on such check or instrument.

(5) Causing charges to be made to any person for communications by concealment of the true purpose of the communication. Such charges include, but are not limited to, collect telephone calls and telegram fees.

(6) Taking or threatening to take any nonjudicial action to effect dispossession or disablement of property if—

(A) there is no present right to possession of the property claimed as collateral through an enforceable security interest;

(B) there is no present intention to take possession of the property; or

(C) the property is exempt by law from such dispossession or disablement.

(7) Communicating with the consumer regarding a debt by post card.

(8) Using any language or symbol, other than the debt collector's address, on any envelope when communicating with a consumer by use of the mails or by telegram, except that a debt collector may use his business name if such name does not indicate that he is in the debt collection business.

§1692i Legal actions by debt collectors

(a) Any debt collector who brings any legal action on a debt against any consumer shall—

(1) in the case of an action to enforce an interest in real property securing the consumer's obligation, bring such action only in a judicial district or similar legal entity in which such real property is located; or

(2) in the case of an action not described in paragraph (1) bring such action only in the judicial district or similar legal entity—

(A) in which such consumer signed the contract sued upon; or

(B) in which such consumer resides at the commencement of the action.

(b) Nothing in this subchapter shall be construed to authorize the bringing of legal actions by debt collectors.
